

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 42

UNITED STATES PATENT AND TRADEMARK OFFICE

**MAILED**

**MAY 29 2002**

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte SCOTT D. AUGUSTINE  
and  
DOUGLAS J. AUGUSTINE

Appeal No. 2002-0997  
Application No. 08/855,061

ORDER REMANDING TO EXAMINER

On page 3 of the Examiner's Answer mailed May 22, 2001  
(Paper No. 39), the examiner listed the following references  
under the heading "(9) Prior Art of Record":

3714947	Hardy	2-1973
4,572,188	Augustine et al.	2-1986
2,110,022	Kliesrath	3-1938
113,420	Roehr	7-1984

Appeal No. 2002-0997  
Application 08/855,061

It is noted that the Moore reference cited on page 5 of the Examiner's Answer under the heading "Response to Argument" is not included as "Prior Art of Record." In accordance with § 1211 of the Manual of Patent Examining Procedure (MPEP) (7th Ed., Rev. 1, Feb. 2000), clarification is required regarding the pertinence of the Moore reference. In addition, MPEP § 1208(A)(9) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . .

(9) References of Record. A listing of the references of record relied on, and, in the case of nonpatent references, the relevant page or pages.

If appropriate, compliance with MPEP § 1208(A)(9) is required in listing the Moore reference under the heading "Prior Art of Record" appearing in the Examiner's Answer mailed May 22, 2001 (Paper No. 39).

It is also noted that the Kliesrath reference (2,110,022) is included in the "Prior Art of Record" of the Examiner's Answer but is not discussed as part of any rejection.

Appeal No. 2002-0997  
Application 08/855,061

Clarification is requested regarding the pertinence of this reference.

Accordingly, it is

ORDERED that the application is remanded to the examiner for:

1. for clarification under MPEP § 1211 regarding the pertinence of the Moore reference listed on page 5 of the Examiner's Answer mailed May 22, 2001 (Paper No. 39);

2. if appropriate, for compliance with MPEP § 1208(A)(9) by listing the Moore reference in a Supplemental Examiner's Answer under the heading "References of Record";

3. for clarification regarding the pertinence of the Kliesrath reference listed on page 3 of the Examiner's Answer mailed May 22, 2001 (Paper No. 39) under the heading "Prior Art of Record"; and

4. for such further action as may be appropriate.

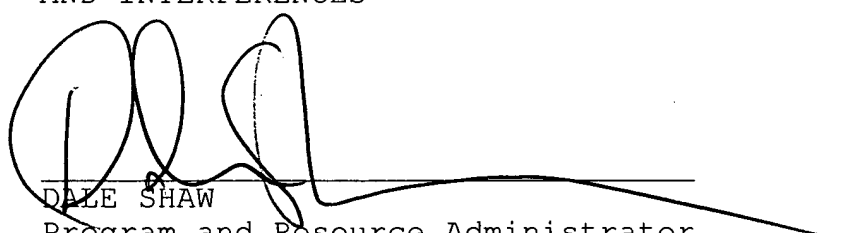
It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the

Appeal No. 2002-0997  
Application 08/855,061

status of the appeal (i.e., abandonment, issue, reopening  
prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:



DALE SHAW

Program and Resource Administrator  
(703) 308-9797

DS:psb

cc: Terrance A. Meador  
Gray Cary Ware & Freidenrich  
401 B Street - Suite 1700  
San Diego, CA 92101